

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

MALCOLM WIENER,

Plaintiff,

v.

AXA EQUITABLE LIFE INSURANCE
COMPANY,

Defendant.

Case No. 3:18-CV-106-RJC-DSC

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendant AXA Equitable Life Insurance Company (“AXA Equitable”), hereby respectfully moves for summary judgment dismissing Plaintiff Malcolm Wiener’s Complaint in its entirety. The Complaint alleges four claims sounding in negligent misrepresentation, libel, negligence, and unfair and deceptive trade practices. Plaintiff’s claims are predicated on the allegation that AXA Equitable reported false information to the Medical Information Bureau (“MIB”) in the form of MIB codes and thereby rendered him “uninsurable.” See Complaint, Dkt. No. 1, Ex. 2, ¶¶ 42, 50, 63, 70.

Summary judgment in favor of AXA Equitable is warranted on three independently dispositive grounds:

- (1) the MIB codes that AXA Equitable reported to the MIB were verifiably accurate;
- (2) the codes cannot prevent Mr. Wiener from obtaining insurance because life companies are expressly *prohibited* from denying insurance based solely on the codes; and

(3) Plaintiff has taken no steps to correct the purportedly false MIB codes, which can be corrected if incorrect.

Accordingly, AXA Equitable is entitled to summary judgment on all counts of the Complaint.

A Memorandum of Law in support of the instant motion is filed simultaneously herewith.

Respectfully submitted this 24th day of January 2020.

THE DEFENDANT,
AXA EQUITABLE LIFE INSURANCE
COMPANY

By: /s/ Aaron C. Lang

Aaron C. Lang
N.C. Bar No.: 51511
Cadwalader, Wickersham & Taft LLP
227 West Trade Street
Charlotte, NC 28202
aaron.lang@cwt.com
Telephone: 704-348-5145
Telefax: 704-348-5200

Robert Cassot (admitted *pro hac vice*)
Federal Bar No.: ct24094
Morrison Mahoney LLP
One Constitution Plaza, 10th Floor
Hartford, CT 06103
rcassot@morrisonmahoney.com
Telephone: 860-616-4441
Telefax: 860-244-3800

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via e-mail, pursuant to the parties' agreement, on January 24, 2020, to the following counsel:

Attorney for Plaintiff
Kerry L. Traynum, Esq.
kerry@skufcalaw.com

BY: /s/ Aaron C. Lang
Aaron C. Lang